

BOARD MEETING DATE: May 4, 2007

AGENDA NO.

PROPOSAL: Adopt Proposed Amended Regulation III - Fees

SYNOPSIS: Staff is proposing to implement the increase of 10 percent for Permit Processing Fees, Annual Operating Permit Renewal Fees and Annual Operating Emissions Fees for FY 2007-2008, as adopted by the Board June 9, 2006. In addition staff is proposing an increase of 3.3% equivalent to the change in the 2006 Consumer Price Index for all other fee categories to maintain cost recovery and fund the AQMD FY 2007-08 Budget and also clarify or correct rule language.

COMMITTEE: Stationary Source, April 27, 2007

RECOMMENDED ACTION:

Adopt the attached resolution:

1. Certifying the Notice of Exemption for Proposed Amended Rules 301 – Permitting and Associated Fees, 303 – Hearing Board Fees, 304 – Equipment, Materials and Ambient Air Analyses, 304.1 – Analyses Fees, 306 – Plan Fees, 307.1 – Alternative Fees for Air Toxics Emissions Inventory, 308 – On-Road Motor Vehicle Mitigation Options Fees, 309 – Fees for Regulation XVI, 311 – Air Quality Investment Program (AQIP) Fees, and Proposed Rule 313 – Authority to Adjust Fees and Due Dates.
2. Adopt Proposed Amended Regulation III - Fees to:
 - a) In FY 07-08 implement the increase of 10 percent for Permit Processing Fees, Annual Operating Permit Renewal Fees and Annual Operating Emission Fees adopted by the Board on June 9, 2006; and
 - b) Increase all other fees as, applicable, by a rate of 3.3% equivalent to the 2006 change in the California Consumer Price Index (CPI), to adjust for inflation and continue better recovering program costs; and
 - c) Clarify or correct certain existing language, with negligible or no fiscal impact.

Barry R. Wallerstein, D.Env.
Executive Officer

Background

Regulation III – Fees, establishes the fee rates and schedules associated with permitting, annual renewals, emissions and other activities that help fund most of AQMD's regulatory programs and services. Shortfalls exist despite the significant budget reductions adopted and continuous improvements in performance and efficiency. Key contributors to the shortfalls include the declining emissions fee revenues, and legally mandated retirement contributions. In addition, due to the provisions of Rule 2002(f)(1)(A) effective January 2007, NOx emissions fees from RECLAIM sources will decline due to a mandatory annual reduction each year.

To address the shortfall in revenues, staff adopted amendments to the fee rule at the June 9, 2006 public hearing to more fully recover specific program costs and fee increases. The adopted amendment included a 3.65% fee increase (the change in the 2005 California Consumer Price Index) for all source categories for FY 2006-07, except for permitting, annual renewal and emission fees which are to be increased by a total of 10% annually for 3 years, to more fully recover program costs.

The current proposal seeks to increase fees other than Permit Processing, Annual Operating Permit Renewal and Annual Operating Emissions Fees by the change in the 2006 CPI. Increasing fees by the change in the 2006 CPI will relieve inflationary pressure on the recovery action taken by the Board at the June 9, 2006 Board hearing and as such seeks to preserve the goal of closely aligning revenues with program costs. Other amendments are administrative in nature and include clarification and correction of existing language with negligible or no fee increase. The proposed amendments also include a provision to recover the costs borne by the District in defense of a permit issued and would allow the District to be reimbursed for all reasonable and necessary costs paid by the District to defend the issuance of a permit against a legal challenge.

California Health and Safety Code Section 40500, et seq., established AQMD's authority to adopt rules and regulations, including fee schedules intended to cover AQMD's actual costs of cleaning the air. There are currently twelve rules within Regulation III - Fees that set fees and procedures in three major categories:

- (1) Permitting, including permit processing and annual renewals of permits to stationary sources;
- (2) Annual emission fees for facilities that have the potential to emit or have emitted toxic or criteria air contaminants; and

- (3) Other District services including variances from the Hearing Board, compliance monitoring and testing, review of emission control plans, registration programs and certain training programs.

California Health and Safety Code sections relating to the fees of the AQMD allow staff to align fees with costs to recover program costs. The current proposal seeks to continue the goal of maintaining better cost recovery by compensating for inflation. The proposed Fiscal Year 2007-08 Budget and Work Program will be incorporated by reference in the final Board package.

Proposal

The amendments being considered for Regulation III focus on better recovering the costs of the various stationary source programs and clarifying existing language in the rule. All fees are proposed to be increased by the change in the 2006 Consumer Price Index (CPI). No fee increase is proposed for Permitting, Annual Renewal and Emissions fees for which a 10% increase for FY 07-08 and a further 10% increase for FY 08-09 was adopted in June, 2006.

The following summarizes the proposed amendments and the anticipated cost recovery, as shown in Table 1.

Specifically the proposed amendments are as follows:

1. Consumer Price Index (CPI) Adjustment. A 3.3% rate increase in all fees reflecting the 2006 Consumer Price Index (CPI) increase except Permit Processing Fees, Annual Operating Permit Renewal Fees and Annual Operating Emission Fees. The Governing Board amended Rule 301 – Permitting and Associated Fees and adopted Rule 313 – Authority to Adjust Fees and Due Dates on June 2, 2006 to increase those three fees by 10 percent in FY 2007-08; therefore, no change is recommended for those three fee categories; and
2. Corrections and clarifications with minimal or no fiscal impact as follows:

Provision	Proposed Amendment
301t(2) [Correction]	CEQA Fee Fees for requested expedited CEQA work will be an additional fee based upon actual review and work time billed at a rate for staff overtime which is equal to the staff's hourly rate of \$104.43 <u>121.91</u> for FY 07-08 and <u>134.10</u> for FY 08-09 plus \$54.17 <u>63.23</u> for FY 07-08 and <u>\$69.56</u> for FY 08-09 per hour (one half of hourly plus mileage).

301t(3) [Correction] [Clarification]	CEMS, FSMS, and ACEMS Fee Fees for requested expedited processing of CEMS, FSMS, and ACEMS applications will be an additional fee based upon actual review and work time billed at a rate for staff overtime which is equal to the staff's hourly rate of \$104.43 <u>121.91</u> for FY 07-08 and <u>134.10</u> for FY 08-09 plus \$54.17 <u>63.23</u> for FY 07-08 and <u>\$69.56</u> for FY 08-09 per hour (one half of hourly plus mileage). The established "Basic Fee" schedule found in the CEMS, FSMS and ACEMS Fee Schedule in Table IIC shall be paid at the time of filing with the additional overtime costs billed following project completion (adjustments to the final bill will be made accordingly for the processing time which is included in the minimum fee, and for the "Maximum Fee" offset as a result of the expedited fee schedule).).			
301(z) [Cost Recovery Neutral - New]	<u>Defense of Permit</u> <u>The applicant or permit holder shall reimburse the District for all reasonable and necessary costs to defend the issuance of a permit against a legal challenge.</u>			
301 Summary of Permit Fee Rates [Correction]	<u>FY 07-08 FY 08-09</u>			
	Schedule	Permit Processing Fee	Change of Condition	Alteration/ Modification
	A	\$1,287.22	\$670.49	\$1,287.22
	A1	\$1,287.22	\$670.49	\$1,287.22
	B	\$2,051.52	\$1,016.31	\$2,051.52
	B1	\$3,244.91	\$1,758.90	\$3,244.91
	C	\$3,244.91	\$1,758.90	\$3,244.91
	D	\$4,478.51	\$3,008.18	\$4,478.51
	E	\$5,148.93	\$4,416.74	\$5,148.93
	F	\$12,939.58+T&M	\$6,448.14	\$10,257.62+T&M
	G	\$15,272.72+T&M	\$13,873.64	\$12,590.75+T&M
	H	\$23,666.52+T&M	\$25,206.34	\$20,984.56+T&M

301 Table IIC [Correction]	TABLE IIC CEMS, FSMS, & ACEMS FEE SCHEDULE																							
<table><tr><th>Certification Review</th><th></th><th></th></tr><tr><th>CEMS and FSMS Review¹</th><th>Basic Fee²</th><th>Maximum Fee</th></tr><tr><td>Any combination of pollutants, diluent, flow, or other parameter³ for: One to two components Three to four components</td><td><u>\$2,508.44</u><u>2,928.33</u> for FY 07-08 and <u>\$3,221.17</u> for FY 08-09 <u>\$3,322.45</u><u>3,526.00</u> for FY 07-08 and <u>\$3,878.59</u> for FY 08-09</td><td><u>\$4,491.26</u><u>5,243.05</u> for FY 07-08 and <u>\$5,767.36</u> for FY 08-09 <u>\$7,973.83</u><u>9,648.33</u> for FY 07-08 and <u>\$10,613.17</u> for FY 08-09</td></tr><tr><td>For each additional component beyond four, the following amount is added to the fee for four components</td><td>\$0.00</td><td><u>\$2,041.58</u><u>2,383.32</u> for FY 07-08 and <u>\$2,621.66</u> for FY 08-09</td></tr><tr><td>For time-sharing of CEMS, the following amount is added to any fee determined above</td><td>\$0.00</td><td><u>\$2,041.58</u><u>2,383.32</u> for FY 07-08 and <u>\$2,621.66</u> for FY 08-09</td></tr><tr><th>ACEMS Review</th><th>Basic Fee⁴</th><th>Maximum Fee</th></tr><tr><td></td><td><u>\$2,508.44</u><u>2,928.33</u> for FY 07-08 and <u>\$3,221.17</u> for FY 08-09</td><td><u>\$7,973.83</u><u>9,648.33</u> for FY 07-08 and <u>\$10,613.17</u> for FY 08-09</td></tr></table>				Certification Review			CEMS and FSMS Review ¹	Basic Fee ²	Maximum Fee	Any combination of pollutants, diluent, flow, or other parameter ³ for: One to two components Three to four components	<u>\$2,508.44</u> <u>2,928.33</u> for FY 07-08 and <u>\$3,221.17</u> for FY 08-09 <u>\$3,322.45</u> <u>3,526.00</u> for FY 07-08 and <u>\$3,878.59</u> for FY 08-09	<u>\$4,491.26</u> <u>5,243.05</u> for FY 07-08 and <u>\$5,767.36</u> for FY 08-09 <u>\$7,973.83</u> <u>9,648.33</u> for FY 07-08 and <u>\$10,613.17</u> for FY 08-09	For each additional component beyond four, the following amount is added to the fee for four components	\$0.00	<u>\$2,041.58</u> <u>2,383.32</u> for FY 07-08 and <u>\$2,621.66</u> for FY 08-09	For time-sharing of CEMS, the following amount is added to any fee determined above	\$0.00	<u>\$2,041.58</u> <u>2,383.32</u> for FY 07-08 and <u>\$2,621.66</u> for FY 08-09	ACEMS Review	Basic Fee ⁴	Maximum Fee		<u>\$2,508.44</u> <u>2,928.33</u> for FY 07-08 and <u>\$3,221.17</u> for FY 08-09	<u>\$7,973.83</u> <u>9,648.33</u> for FY 07-08 and <u>\$10,613.17</u> for FY 08-09
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301 Table IIC CEMS, FSMS & ACEMS FEE Schedule Footnote 2 [Correction]	Excess hours beyond these will be charged at <u>\$104.43</u> <u>121.91</u> for FY 07-08 and <u>134.10</u> for FY 08-09 per hour, to the maximum listed in the table.																							

306(i)(1) [Clarification]	<p><u>Plan Filing or Submittal Fee</u> [change to heading only; not to rule text]</p> <p>In addition to payment of the filing fee, the initial payment for plan evaluation fees shall be \$265.51 paid at the time of filing. This fee shall not apply to plans pursuant to Rule 403 – Fugitive Dust, and Rule 1166 – Various Location Plans issued pursuant to the Decontamination of VOC Soil, for which the initial payment for plan evaluation fees will be \$104.43. <u>This fee shall also not apply to Rule 1133 registration and annual updates, for which the plan submittal fee will be charged solely in accordance with paragraph (c) of this Rule.</u> The adjustment to plan evaluation fees will be determined at the time a plan is approved or rejected and notification of the amount due or a refund will be made.</p>
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Table 2 below summarizes the estimated net increased revenue for FY 07-08 over FY 06-07 revenue with the adoption of the proposed CPI rate increase in fees.

Table 1. Summary of Estimated Increased Cost Recovery for FY 07-08

Provision	Estimated Increased Revenue in Millions of Dollars
Proposed 3.3% CPI Increase	2.0
Impact of 2006 Amendment*	3.9
TOTAL	5.9

* 10% increase in Permit, Annual Operating Permit Renewal and Annual Operating Emissions fees

AQMP and Legal Mandates

The fee rules are not part of the AQMP. California Health and Safety Code §§ 40500 et seq. established the authority to “adopt fee schedules for the issuance of variances and permits to cover the reasonable cost of permitting, planning, enforcement, and monitoring related thereto,” and to assess fees for the approval of plans for the control of air contaminants and for regulatory programs affecting indirect and area sources (H&S §§ 40522 and 40522.5). California Health and Safety Code Sections 40500.1, 40510, 40510.5 and 40523 authorize AQMD to increase fees consistent with annual increases in the California Consumer Price Index (CPI).

CEQA & Socioeconomic Analysis

AQMD staff has reviewed the proposed amendments to Rules 301, 303, 304, 304.1, 305, 306, 307.1, 308, 309, 311, and 313, and because the proposed project involves the modification and structuring of charges by public agencies for the purpose of meeting operating expenses and financial reserve requirements, it is statutorily exempt from CEQA, pursuant to state CEQA Guidelines § 15273 – Rates, Tolls, Fares, and Charges.

A Notice of Exemption will be filed with the county clerks immediately following adoption of the proposed project.

A Socioeconomic Assessment of the proposed amendments to Regulation III - Fees will be prepared and distributed to the public 30 days prior to the Public Hearing for this amendment.

Resource Impacts

No additional resource impacts are expected.

DRAFT